

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL FIZER,

Plaintiff,

vs.

CITY OF DETROIT, *et al.*,

Defendants.

Case No. 09-10729

John Feikens
United States District Judge

Michael Hluchaniuk
United States Magistrate Judge

REPORT AND RECOMMENDATION
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (Dkt. 19)

The complaint in this matter was filed in Wayne County Circuit Court on February 17, 2009, alleging causes of action, including a claimed violation of 42 U.S.C. § 1983, against the City of Detroit and two Detroit police officers, Ernest Cleaves and Cyril Davis, arising from an incident on February 12, 2006. The complaint was removed to federal court on February 26, 2009. (Dkt. 1).

Defendants filed a motion for summary judgment on March 22, 2010. (Dkt. 19). Defendants' motion claimed that plaintiff's claims against the City of Detroit were improper, that certain claims against defendant Davis were barred by the doctrine of qualified immunity or were filed after the expiration of the applicable limitation period for such claims and that certain claims against defendant Cleaves

were also filed after the expiration of the applicable limitation period. (Dkt. 19). Plaintiff did not file a written response to defendants' motion.

Pursuant to notice, a hearing was held on the motion on May 13, 2010. Counsel for defendants and counsel for plaintiff participated in the hearing on the motion. During the hearing, counsel for the parties indicated that a stipulation had been reached regarding the disposition of the motion. The terms of the stipulation were placed on the record during the hearing and those terms provided that all claims against the City of Detroit and defendant Davis would be dismissed and the intentional state law tort claims against defendant Cleaves would also be dismissed. On May 14, 2010, as directed by the court, the parties filed a written stipulation reflecting the terms of the stipulation placed on the record during the May 13, 2010 hearing. (Dkt. 21).

Based on the stipulation of the parties, as stated on the record on May 13, 2010, and as indicated in the written stipulation of the parties, it is **RECOMMENDED** that all claims against the City of Detroit and against defendant Cyril Davis be **DISMISSED** with prejudice. It is further **RECOMMENDED** that the state law claims involving claims of intentional conduct against defendant Ernest Cleaves also be **DISMISSED** with prejudice. This recommendation would dispose of some but not all the claims maintained by

plaintiff. Remaining would be the claim under 42 U.S.C. § 1983 and the claim under state law for gross negligence against defendant Ernest Cleaves only.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as “Objection No. 1,” “Objection No. 2,” etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection

No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: May 17, 2010

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on May 17, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Kenneth D. Finegood and Jerry L. Ashford.

s/Tammy Hallwood
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